

REMARKS

This Amendment is being filed in response to the Office Action mailed on February 21, 2008, which had been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-13 and 15-18 remain in this application, where claims 4 and 6 are withdrawn, and claim 14 has been canceled by this amendment without prejudice. Applicants reserve the right to reintroduce subject matter deleted herein at a later time during the prosecution of this application or continuing applications.

By means of the present amendment, claims 2-3, 5, 7, 9-10 and 12 have been amended for non-statutory reasons, such as for better form including beginning the dependent claims with 'The' instead of 'A'. Such amendments to claims 2-3, 5, 7, 9-10 and 12 were not made in order to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents.

In the Office Action, the Examiner objected to claim 10 for a certain informality. In response, claim 10 has been amended to remove the informalities noted by the Examiner. Accordingly,

withdrawal of the objection to claim 10 is respectfully requested.

In the Office Action, the Examiner objected to claim 14 for failing to further limit the base claim. Without agreeing with the position forwarded in the Office Action, and in the interest of advancing prosecution, claim 14 has been cancelled without prejudice. The cancellation of claim 14 renders moot the objection thereto.

In the Office Action, the Examiner indicated that claim 11 would be allowable if rewritten in independent form. Applicants gratefully acknowledge the indication that claim 11 contains patentable subject matter. By means of the present amendment, claim 11 has been rewritten in independent form. Accordingly, it is respectfully submitted that independent claim 11 is allowable, and allowance thereof is respectfully requested.

In the Office Action, claims 1-2, 5, 8-10 and 14 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent Application Publication No. 2003/0094893 (Ellens). Claim 3 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ellens in view of WO 01/24229 (Mueller). Claims 7 and 12 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over

Ellens in view of U.S. Patent No. 5,951,915 (Hase). Further, claims 13, 15 and 17 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ellens in view of U.S. Patent No. 6,139,774 (Yamada). Claim 18 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ellens in view of Hase. Claim 16 is rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ellens in view of Yamada and Mueller. It is respectfully submitted that claims 1-13 and 15-18 are patentable Ellens, Mueller, Hase and Yamada for at least the following reasons.

Ellens is directed to an illumination unit having at least one LED. On page 5, table 4, a list of phosphors for emitting visible light are provided including $\text{Sr}_2\text{Si}_2\text{AlON}:\text{Eu}^{2+}$. On page 8 of the Office Action, in rejecting independent claim 13, the Examiner correctly noted that Ellens does not teach or suggest including Mg, Ga or In in the phosphors disclosed in Ellens. Yamada is cited in an attempt to remedy the deficiencies in Ellens.

Yamada is directed to an infrared fluorescent substance, as recited in the Abstract. It is respectfully submitted that one skilled in the art would not combine Yamada with Ellens, since Yamada is concerned with infrared fluorescent substances, while

Ellens is concerned with phosphors that emit visible light.

Assuming, such a combination is proper then, at best, the result would be an infrared emitting phosphor having Ga or In, and still having no Mg. Assuming Mg is similar to Sr, as alleged on page 8 of the Office Action, nevertheless Mg is patentably different from Sr. There is simply no disclosure or suggestion in Ellens, Yamada, and combination thereof, of the particular phosphor recited in independent claim 13, where "element EA [is] selected from a group of Mg and Zn and at least one element B [is] selected from a group of Ga and In, and being activated by a lanthanide selected from a group of cerium, terbium, praseodymium and mixtures thereof." Accordingly independent claim 13 should be allowed.

Further, it is respectfully submitted that Ellens and Yamada does not teach or suggest the present invention as recited in independent claim 1, and similarly recited in independent claim 8 which, amongst other patentable elements, recites (illustrative emphasis provided):

fluorescent material comprising at least one phosphor capable of absorbing a part of light emitted by the radiation source and emitting visible light of wavelength different from that of the absorbed light; wherein said at least one phosphor is an oxido-nitrido-silicate of general formula

$EA_{2-z}Si_{3-a}B_aN_{8-a}O_2:Ln_z$, wherein $0 < z \leq 1$ and $0 < a < 5$,

comprising at least one element EA selected from the group consisting of Mg, Ca, Ba and Zn and at least one element B selected from the group consisting of Ga and In, and being activated by a lanthanide selected from the group consisting of cerium, europium, terbium, praseodymium and mixtures thereof.

Rather, Ellens merely discloses on page 5, table 4, a list of phosphors for emitting visible light that includes $Sr_2Si_4AlON_3:Eu^{+2}$, and Yamada discloses infrared fluorescent substances. Mueller, and Hase are cited to allegedly show other features and do not remedy the deficiencies in Ellens and Yamada.


Accordingly, it is respectfully submitted that independent claims 1, 8 and 13 are allowable, and allowance thereof is respectfully requested. Claims 2-7, 9-10, 12 and 15-18 respectively depend from independent claims 1, 8 and 13 and accordingly are allowable for at least this reason, as well as for the separately patentable elements contained in each of said claims.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of

argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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